



# Complying with State and Local Drainage Laws

When Restoring Drained Wetlands  
*2012 BWSR Academy*



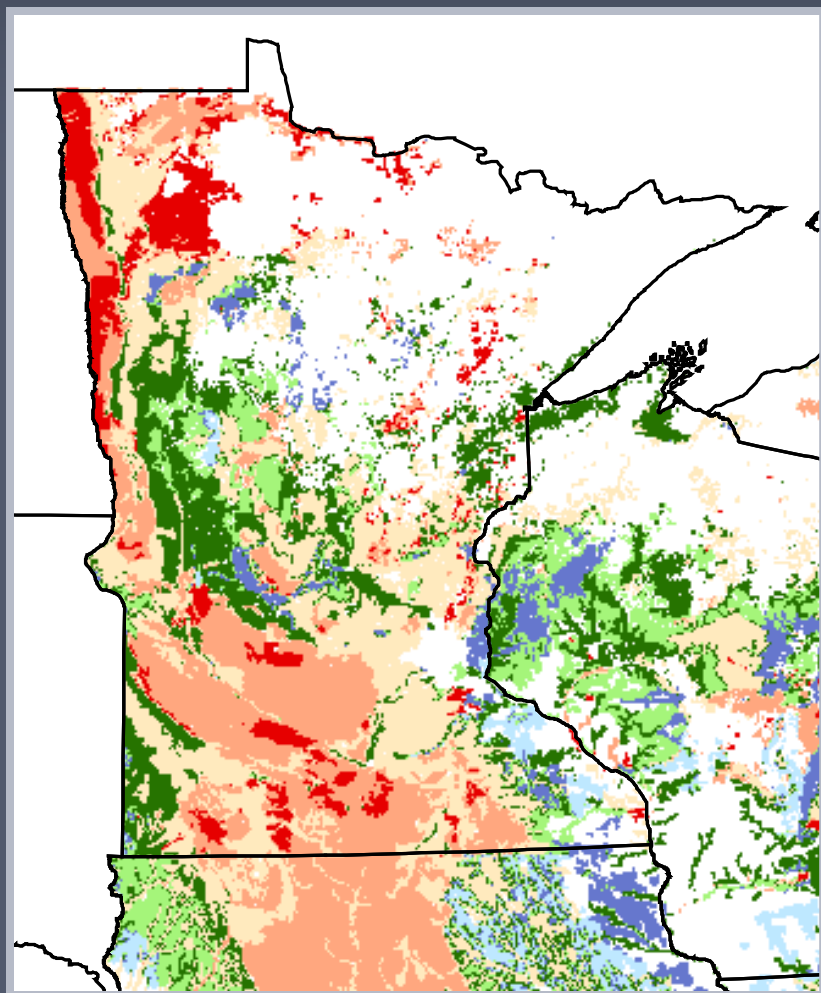
# Drainage Systems in Minnesota

Wetlands in Minnesota are drained or negatively impacted by a vast network and variety of drainage systems





# Midwest Ag Land Benefiting from Improved Drainage



## Percent

White	0 or not agricultural
Light Blue	1 - 2
Blue	2.1 - 5
Light Green	5.1 - 10
Dark Green	10.1 - 20
Orange	20.1 - 40
Dark Orange	40.1 - 60
Red	more than 60

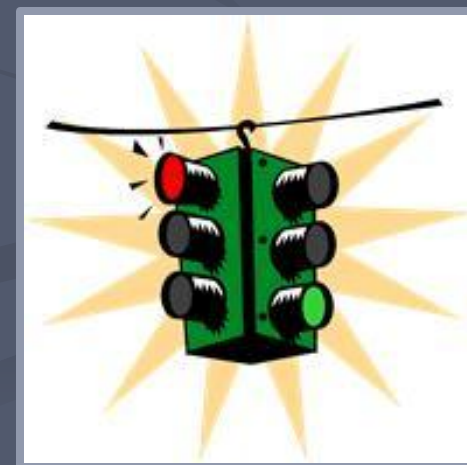
**Source:**  
National  
Soil Tilth  
Laboratory

Wetland restorations will typically require some form of modification or abandonment of an existing drainage system





In doing so ...  
certain state and local drainage laws and  
regulations need to be understood and followed



In addition: Wetland restorations are also often associated with some type of easement acquisition program





Consideration is needed when locating and securing those easements with respect to continued drainage/maintenance rights of adjoining drainage systems



## *Presentation Overview*

### ❑ Public Drainage Systems

- MN Drainage Law
- Process to Modify/Abandon

### ❑ Private Drainage Systems

- Drainage Agreements/Easements
- Reasonable Use Doctrine
- Local Permits



## *Presentation Overview*

- ❑ Easement Acquisition Considerations
- ❑ Project Management/Timing – When to Pursue and Address Legal/Drainage Issues

# Legal Disclaimer

## Drainage Systems Manipulation *Legal Issues*





## ❑ Public Drainage Systems



## ❑ Public Drainage Systems

### ■ Chapter 103E – Drainage Law

- ❖ The primary drainage statute in MN
- ❖ Applies to all drainage authorities, including counties, watershed districts and metro water management organizations

**MN Drainage  
Law 103E**





## ❑ Public Drainage Systems

### ■ Chapter 103E – Drainage Law

- ❖ Public drainage systems are paid for by the benefited landowners and administered by a public drainage authority, in accordance with state drainage law
- ❖ Funding of system activities is typically, but not always through drainage system assessments

## ❑ Public Drainage Systems

### ■ Counties

(approximately 80 of 87 counties in MN currently administer public drainage systems under Chapter 103E)

### ■ Joint County Drainage Authorities

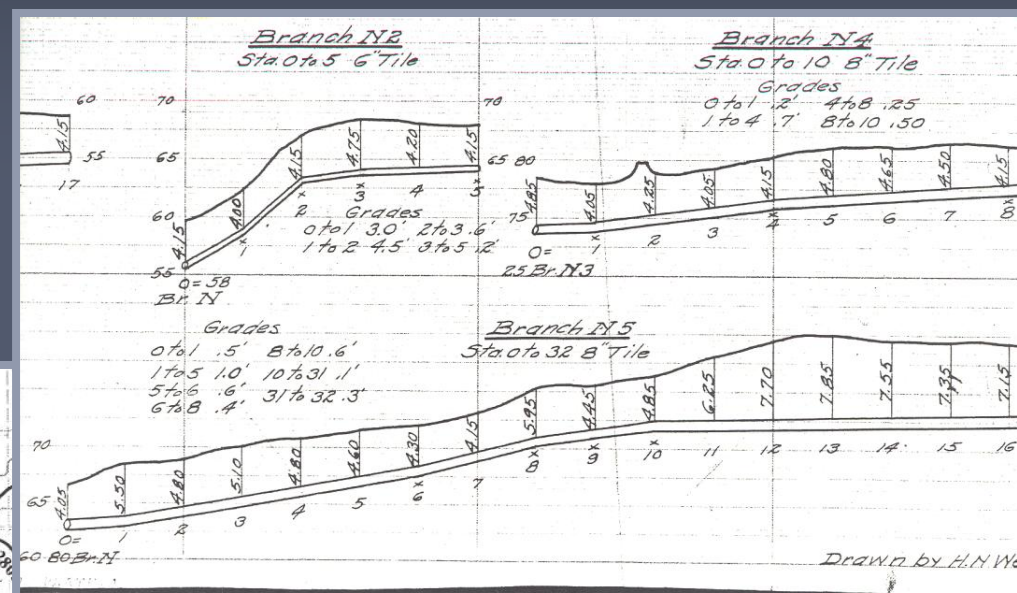
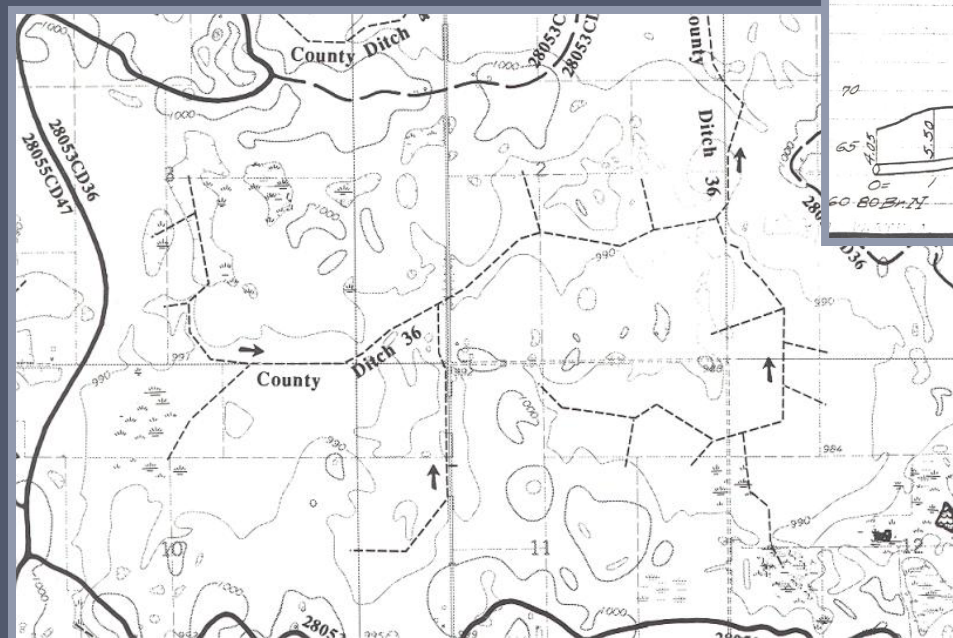
(for drainage systems in more than one county)  
(5 members, at least 1 from each county board)

### ■ Watershed Districts

(21 of 46 currently administer public drainage systems under Chapter 103E)

## Public Drainage Systems

Typically well  
mapped and  
documented





## ❑ Public Drainage Systems

- Landowners, municipalities, governmental entities can (must) petition the drainage authority for a variety of actions including the abandonment or modification a drainage system for the purposes of wetland restoration



## Minnesota Drainage Law – Chapter 103E

### *Applicable Sections for Wetland Restoration*

- ***103E.806***      **Partial Abandonment of a Drainage System**
- ***103E.227***      **Impounding, Rerouting, and Diversion of Drainage System Waters**
- ***103E.701***      **Repairs**
- ***103E.215***      **Improvement of Drainage Systems**



## Minnesota Drainage Law – Chapter 103E

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# Minnesota Drainage Law – Chapter 103E

## *Applicable Sections for Wetland Restoration*

- ***103E.806***      **Partial Abandonment of a Drainage System**
- ***103E.227***      Impounding, Rerouting, and Diversion of  
Drainage System Waters

# Minnesota Drainage Law – Chapter 103E

## *Example No. 1*

- ***103E.806***      **Partial Abandonment of a Drainage System**
- ***103E.227***      Impounding, Rerouting, and Diversion of  
Drainage System Waters

# County Ditch Drained Wetland Basin

## *Ditch Starts in Wetland Basin*





- **Petition for Partial Abandonment of a Drainage System under 103E.806**



## Restored Wetland Basin





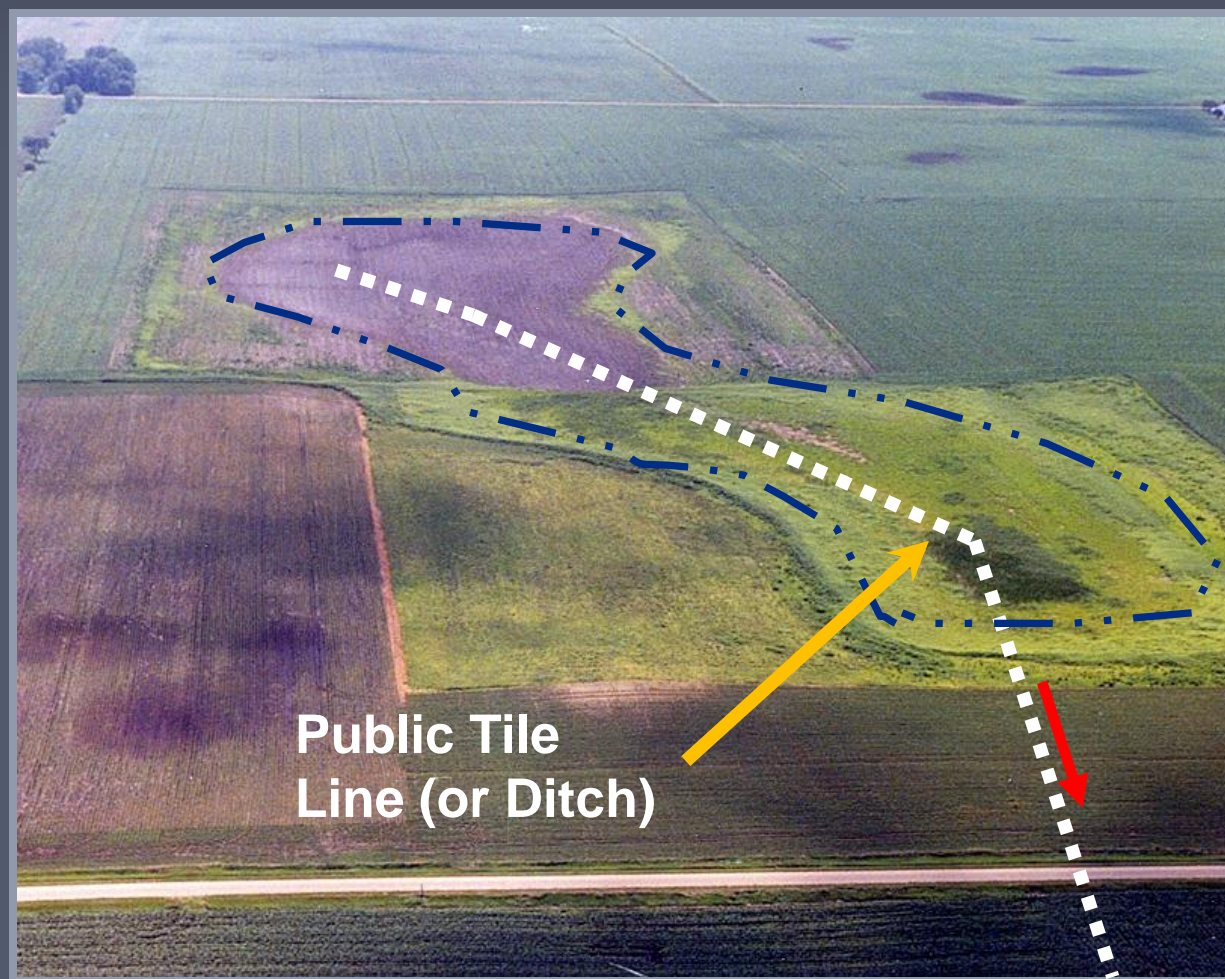
# Minnesota Drainage Law – Chapter 103E

## *Example No. 2*

- ***103E.806***     **Partial Abandonment of a Drainage System**
- ***103E.227***     Impounding, Rerouting, and Diversion of  
Drainage System Waters

# County Tile Drained Wetland Basin

## *Tile Starts in Wetland Basin*





- **Petition for Partial Abandonment of a Drainage System under 103E.806**

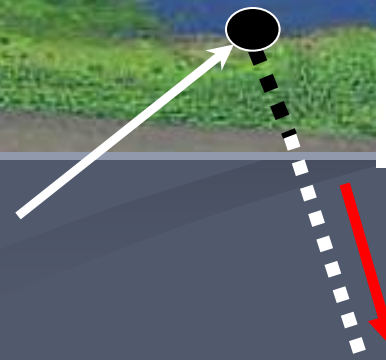




## Restored Wetland Basin



Outlet Structure



## Minnesota Drainage Law – Chapter 103E.806

### *Partial Abandonment - Summary*

- ❑ Drainage authority is no longer responsible for abandoned portion of the drainage system
- ❑ Property is **not** released from current drainage system assessments or free from future assessments
- ❑ Relatively simple process provided project is sound (good engineering/technical data) and no off-site impacts are perceived



# Minnesota Drainage Law – Chapter 103E

## *Applicable Sections for Wetland Restoration*

- *103E.806* Partial Abandonment of a Drainage System
- *103E.227* **Impounding, Rerouting, and Diversion of Drainage System Waters**



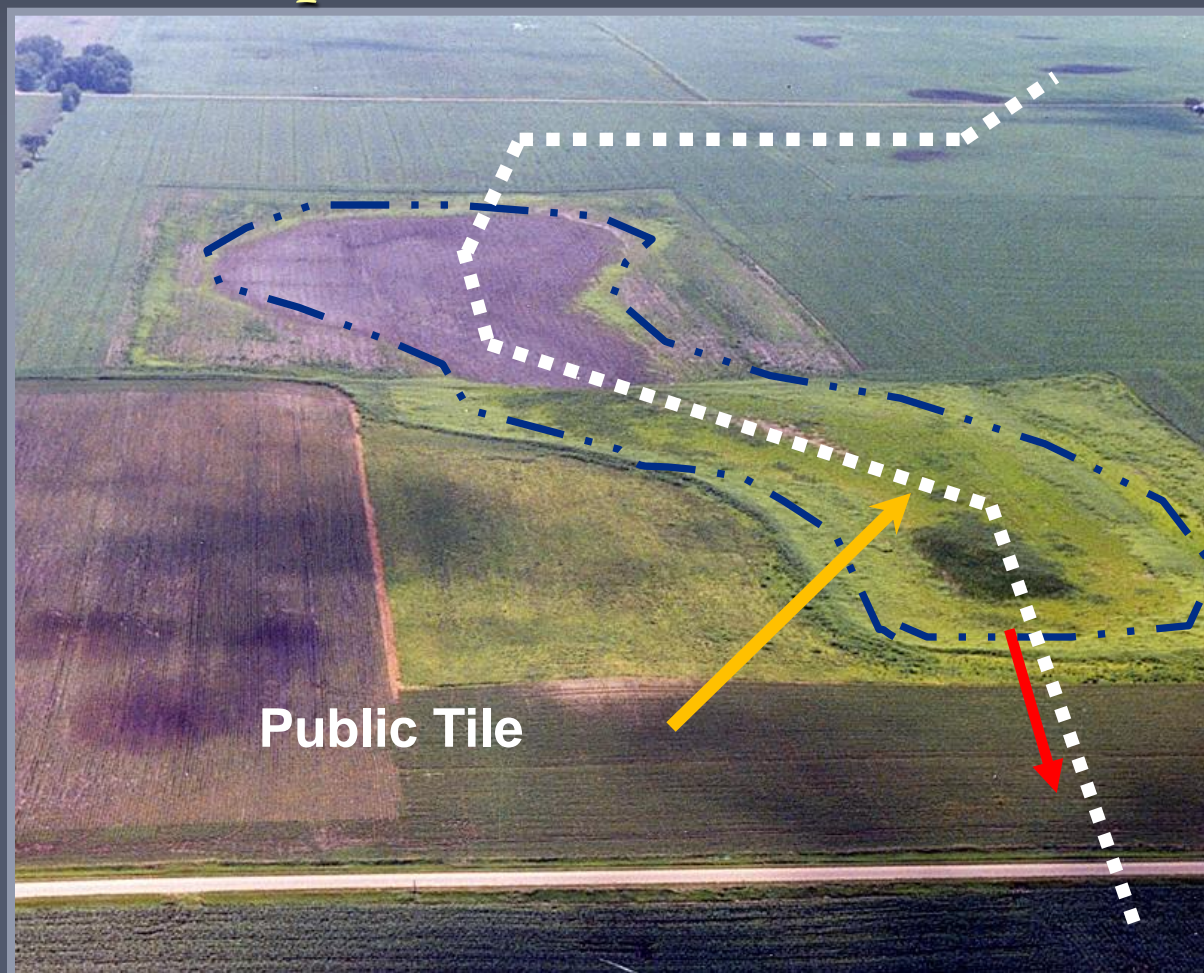
# Minnesota Drainage Law – Chapter 103E

## *Example No. 3*

- *103E.806* Partial Abandonment of a Drainage System
- *103E.227* **Impounding, Rerouting, and Diversion of Drainage System Waters**

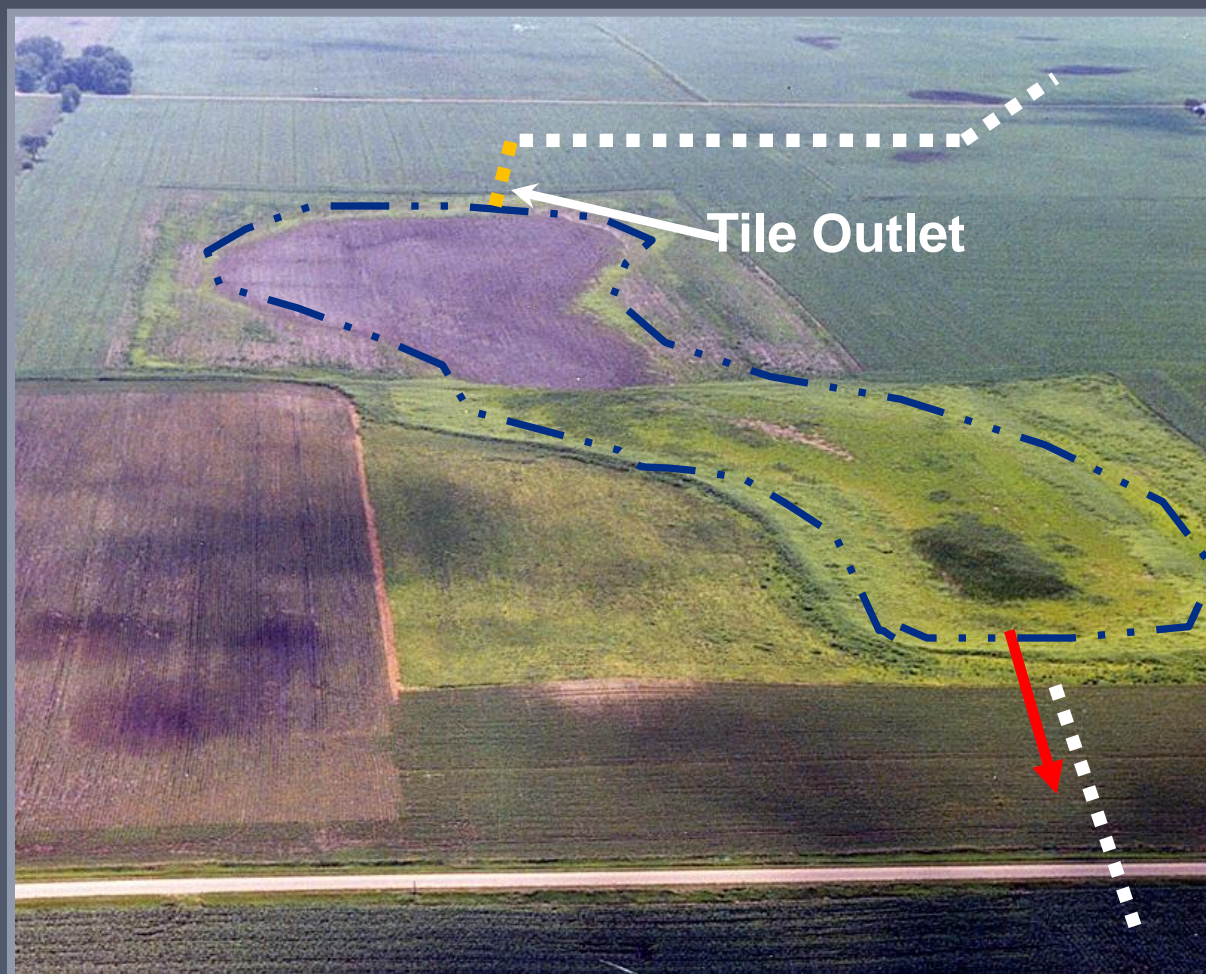
# County Tile Drained Wetland Basin

## *Tile Starts Upstream of Wetland Basin*



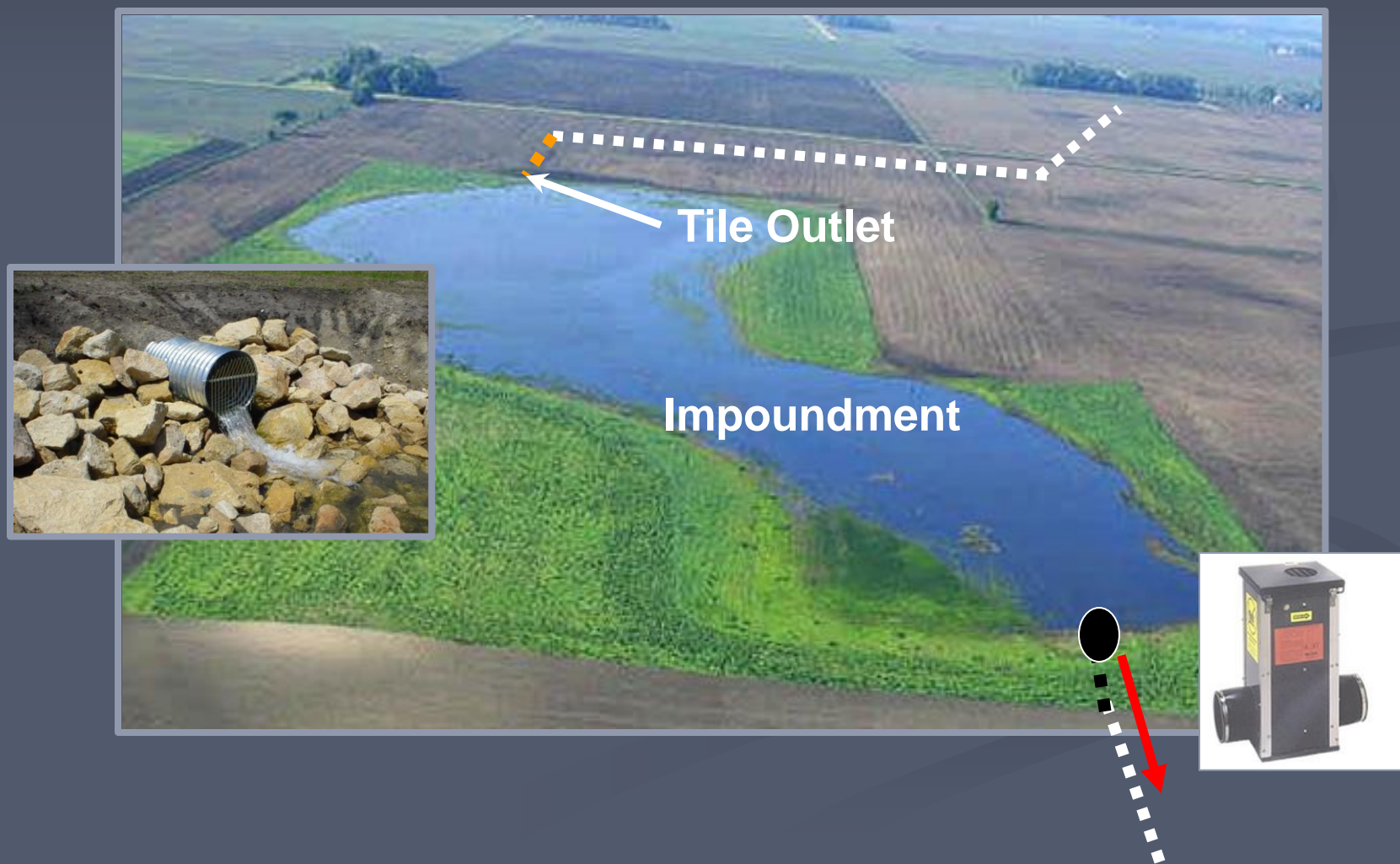


## Outlet Upstream Tile into Wetland Basin





## Restored Wetland Basin



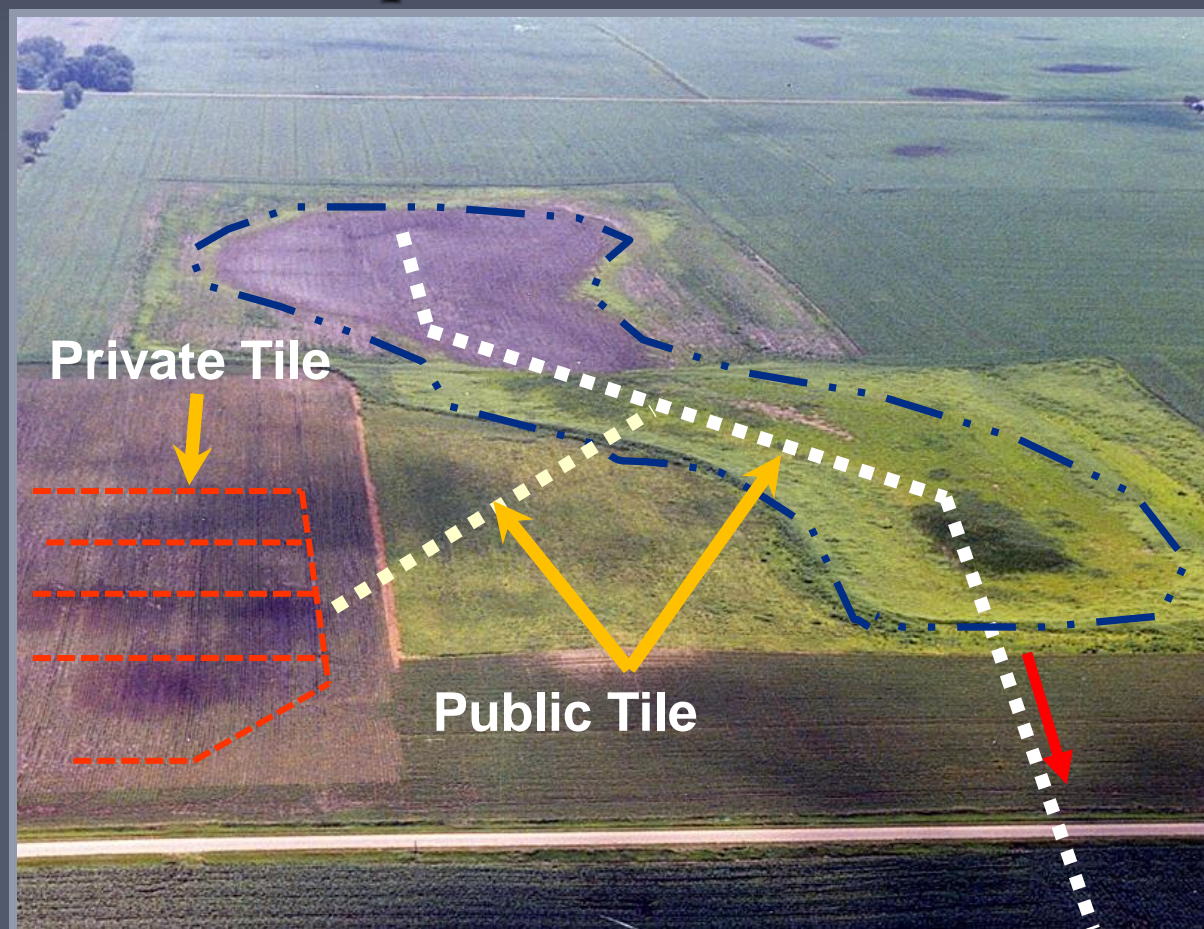
# Minnesota Drainage Law – Chapter 103E

## *Example No. 4*

- *103E.806* Partial Abandonment of a Drainage System
- *103E.227* **Impounding, Rerouting, and Diversion of  
Drainage System Waters**

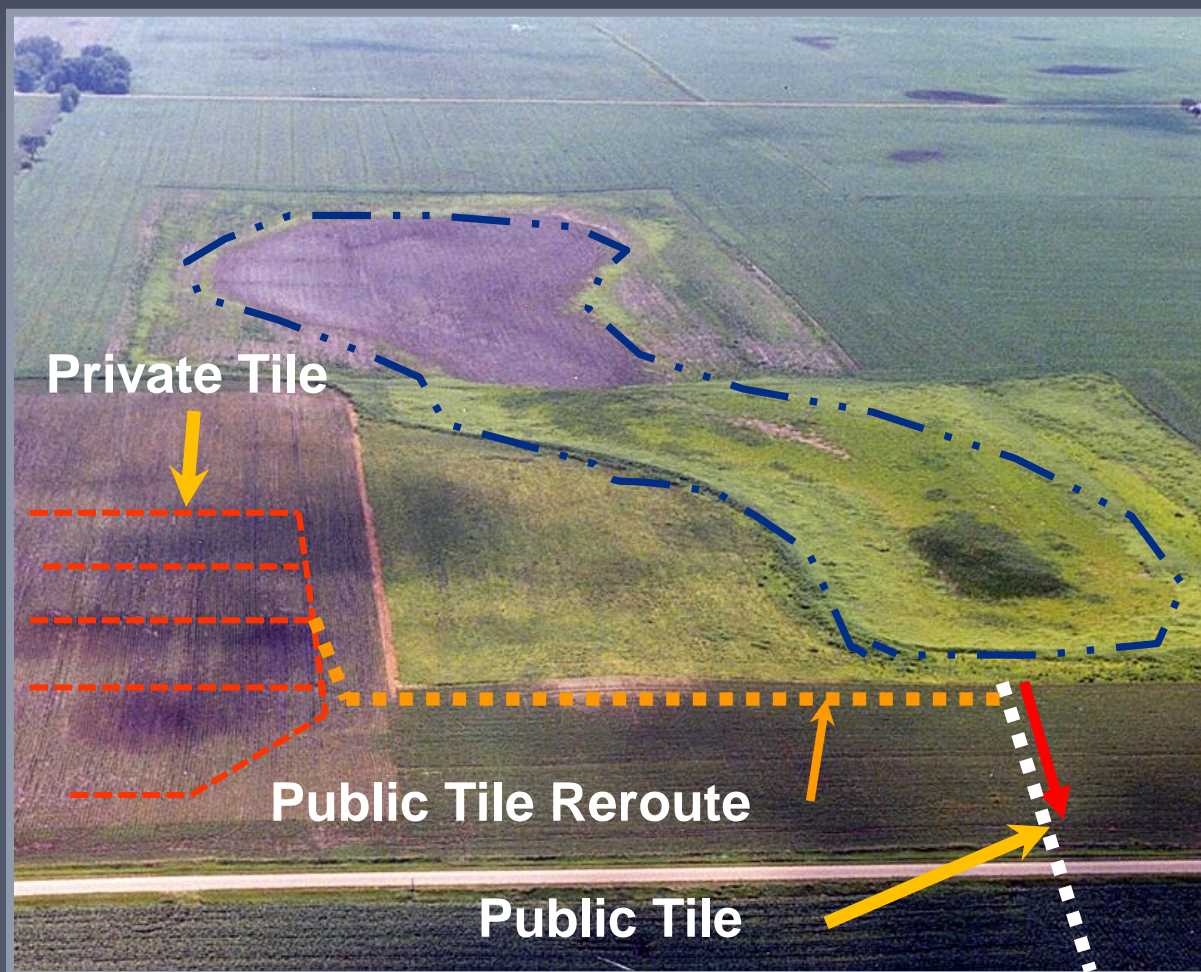
# County Tile Drained Wetland Basin

## *Tile Starts Upstream of Wetland Basin*





# Reroute Upstream Tile Around Wetland Basin



## Restored Wetland Basin



Public Tile Re-route



## Minnesota Drainage Law – Chapter 103E.227

### *Impounding, Diverting and Re-Routing - Summary*

- ❑ Primarily used to restore wetlands along or in-line with public drainage systems
  - in other words, a portion of drainage system still exists upstream of wetland area*
- ❑ Often used in conjunction with 103E.806 (partial abandonment)



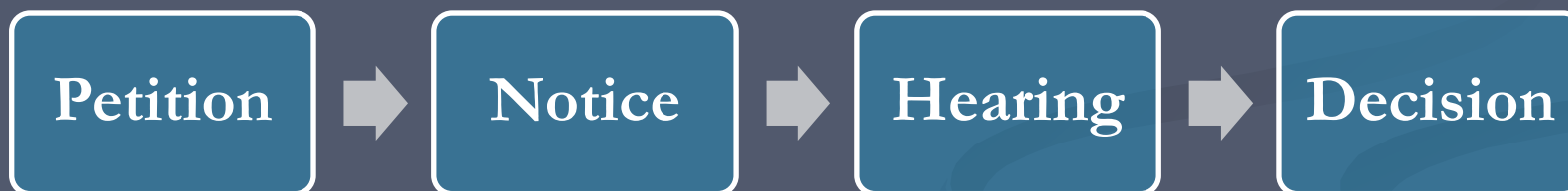
## Minnesota Drainage Law

### *General Process for 103E.806 and 103E.227*

- ❑ The modification/abandonment of a public drainage system requires an action by the landowner(s) / project proposer (**petition**) and decision by the drainage authority (**order**)
- ❑ Petitioner can be a landowner, corporation, LGU, or a state or federal agency

# Minnesota Drainage Law

## *General Process for 103E.806 and 103E.227*



## Minnesota Drainage Law

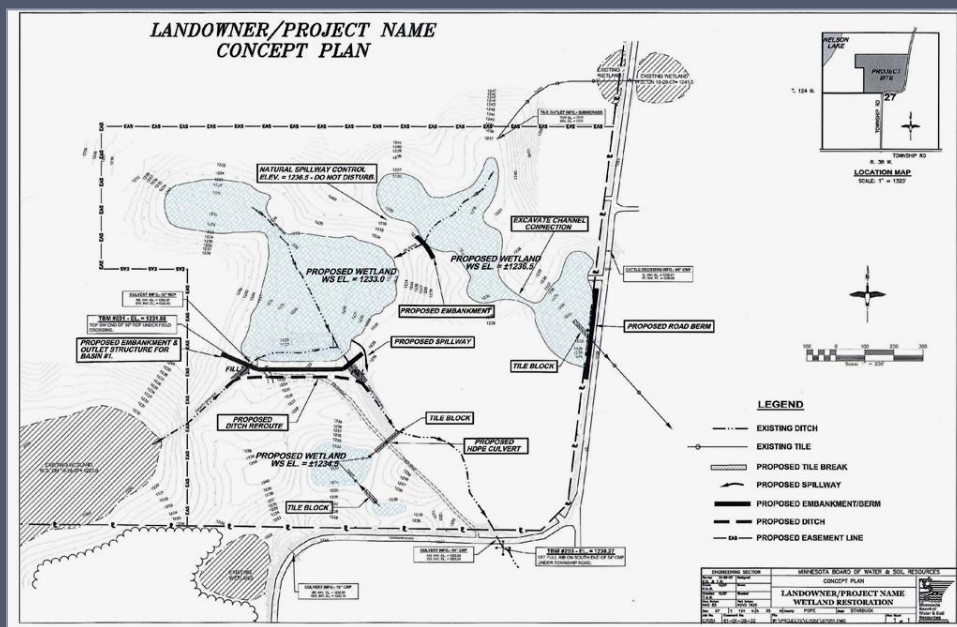
### *Process (.806 and .227)*

- ❑ Petition **must** identify funding sources used to secure land rights and construct the project
- ❑ Petition **must** identify who will be responsible for future maintenance of the project and drainage system modifications
- ❑ Petition **must** include a Concept Plan – *Project Details*



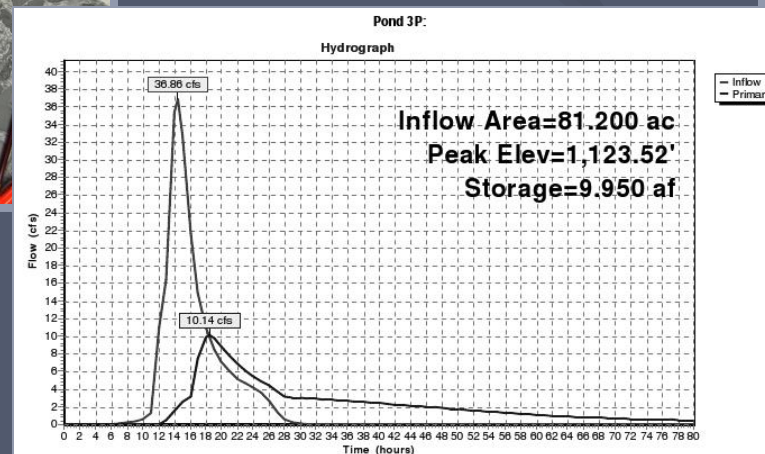
## Minnesota Drainage Law *Process (.806 and .227)*

Drainage Authority approval is most likely if comprehensive and accurate site information is gathered



## Minnesota Drainage Law *Process (.806 and .227)*

And a sound restoration proposal  
is presented



### ENGINEER'S REPORT

*Doug & Don Hansen*  
Wetland Banking Restoration Project

C.D. #65, Murray Co.

Project # 2008-041

August 9, 2011

#### PREPARED BY

TERRY L. RAGAN, P.E.  
MN BOARD OF WATER AND SOIL RESOURCES  
5201 A FAYETTE ROAD NORTH  
ST. PAUL, MN 55155  
(507) 450-3644

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Registered Professional Engineer under the laws of the State of Minnesota.

*Terry L. Ragan*

Terry L. Ragan  
Minn. Registration Number: 41163

Date: 8/9/2011

## Minnesota Drainage Law

### *Process (.806 and .227)*

❑ Upon receipt of petition and concept plan ...

Drainage Authority appoints engineer to review project  
and file a findings report *(.227 only)*



## Minnesota Drainage Law *Process (.806 and .227)*

- Drainage Authority Schedules, Notices, and Conducts Public Hearing
  - Project Presentation
  - Public input/comments
  - Determination of a public or private benefit



## Minnesota Drainage Law

### *Process (.806 and .227)*

- Public Hearing (con't)
  - ❑ Will not impair the utility of the drainage system or deprive landowners of its benefit
  - ❑ If approved, Drainage Authority will issue and order authorizing the project
  - ❑ Property drainage assessments are not released nor changed as part of this process



# Minnesota Drainage Law *Process (.806 and .227)*

Agency Sponsored Projects (BWSR - RIM,  
NRCS – WRP, FWS, DNR, etc.

**vs.**

Private Wetland Banks / Mitigation Projects





# Drainage Systems Manipulation *Legal Issues*

## Minnesota Drainage Law *Process (.806 and .227)*

### ■ In summary ...

When in doubt, applicants  
should seek guidance from  
county administrator,  
drainage inspector, &  
county attorney on process

Before the Murray County Board of Commissioners Acting as Drainage Authority for Murray County Ditch No. 65	) ) )	<b>Petition for Impounding, Rerouting, and Diverting Drainage System Waters Pursuant to Minnesota Statute 103E.227 and for a Partial Abandonment of a Drainage System Pursuant to Minnesota Statutes 103E.806</b>
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- County Ditch No. 65 (CD 65) is a drainage system located in Murray County, Minnesota.
- The undersigned petitioners hereby petition the Murray County Board of Commissioners, acting as the drainage authority, to create impoundments and to partially abandon portions of CD 65 located in the NE ¼ of Section 31, the N ½ of the SE ¼ of Section 31 and part of the West ½ of the NW ¼ of Section 32, in Holly Township, T. 108 North, R. 39 West.
- The petition is offered as a result of perpetual conservation easements that the State of Minnesota has secured on lands located in the NE ¼ of Section 31, N ½ of the SE ¼ of Section 31 and the NW ¼ of Section 32 in Holly Township. The purpose for said easements is for the restoration of drained wetlands and adjoining uplands (Project).
- Said Project involves the construction of impoundments and partial abandonments of the CD 65 tile drainage system to facilitate the restoration of wetlands on said easements.
- That said Project is a continuation of other work completed on conservation easements which included previous modifications to the CD 65 tile system located in the SE ¼ of Section 31 and the SW ¼ of Section 32, in Holly Township, T. 108 North, R. 39 West which was approved and ordered by the Murray County Board of Commissioners on August 5<sup>th</sup>, 2005.
- Specifically, the petitioners propose to modify the CD 65, tile system as follows:
  - That the construction of impoundments on the CD 65, tile system will be completed to facilitate the restoration of wetlands within the project.
  - The abandonment of approximately 200-feet of Lateral 31 from station 40+00 to 38+00.
  - The abandonment of approximately 3,400-feet of Lateral 42 from station 50+33 to 85+00.
  - The abandonment of approximately 140-feet of Lateral 43 from station 5+60 to 7+00.
  - The abandonment of approximately 250-feet of Lateral 44 from station 11+50 to 14+00.
  - That all of the existing Lateral 46 tile be abandoned from station 0+00 to 20+00.
  - That all of the existing Lateral 47 tile be abandoned from station 0+00 to 27+00.
  - That all of the existing Lateral 48 tile be abandoned from station 0+00 to 5+00.
  - That all of the existing Lateral 49 tile be abandoned from station 0+00 to 6+00.
  - That all of the existing Lateral 51 tile be abandoned from station 0+00 to 12+00
- That attached, as:
  - Figure 1 is a map of the existing CD 65, Lateral 42 tile system within the Project area.
  - Figure 2 is a map of the planned modifications to the CD 65, tile system within the Project area.
  - Figure 3 is the planned revision to the tile profile for the CD 65, Lateral 42 tile system for the reach within the previous and present Project areas.
- That the Project's property (easement) owner(s) will be responsible for utilizing program payments and paying for the costs of the proposed project. No assessed ditch funds will be used in construction of the Project.
- That drainage authority for CD 65 will remain responsible for the operation and maintenance of any remaining tile on the CD 65 drainage system.
- That no public water work permit, water use permit, or other permits required under Minnesota Statutes 103G are needed for this project.

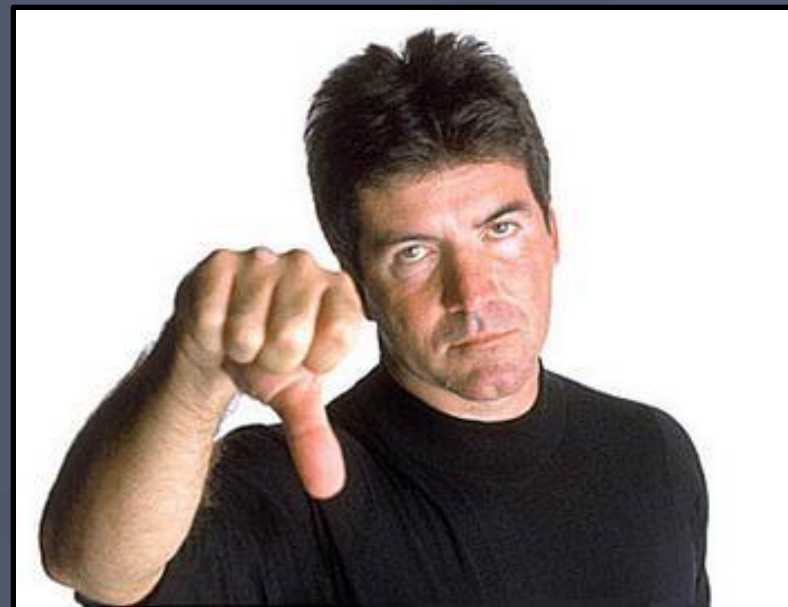
Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2011

Doug G. Hansen	Don G. Hansen
Keela Bakken	Chair, Murray County SWCD

## Minnesota Drainage Law *Process (.806 and .227)*

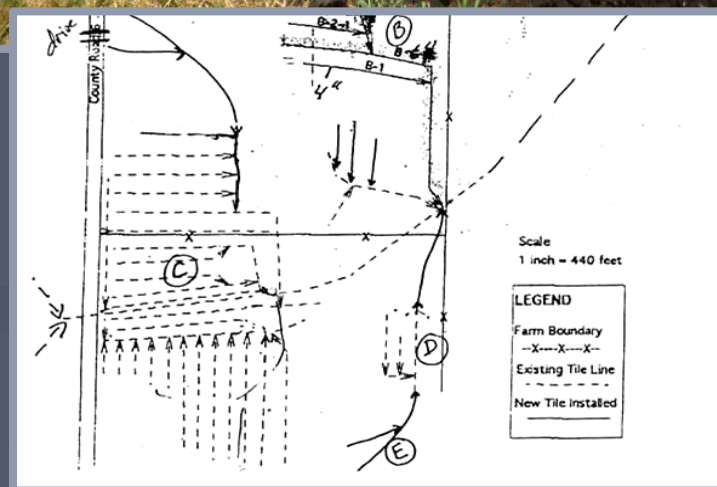
- In summary ...

Drainage Authority  
approval to modify or  
abandon a system is  
not guaranteed



# Drainage Systems Manipulation *Legal Issues*

## ❑ Private Drainage Systems





## ❑ Private Drainage Systems

- Drainage Agreements
- Reasonable Use Doctrine
- Local Permits
  - ❖ Watershed Districts
  - ❖ Watershed Management Organizations

# Drainage Systems Manipulation *Legal Issues*

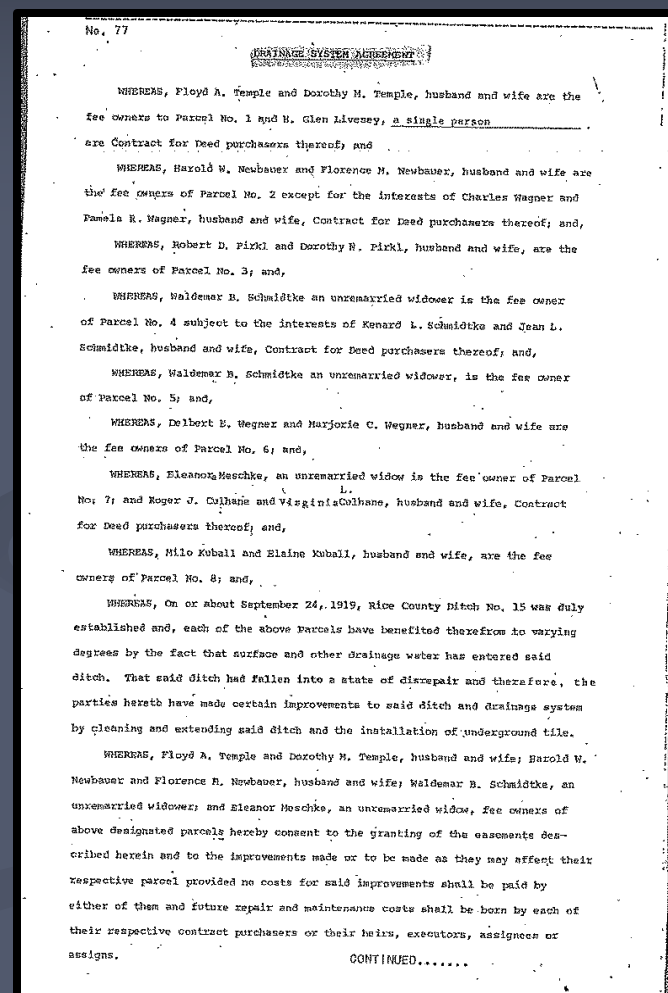
## ❑ Private Drainage Systems

### ■ Drainage Agreements

#### Written Agreement



#### Handshake Agreement

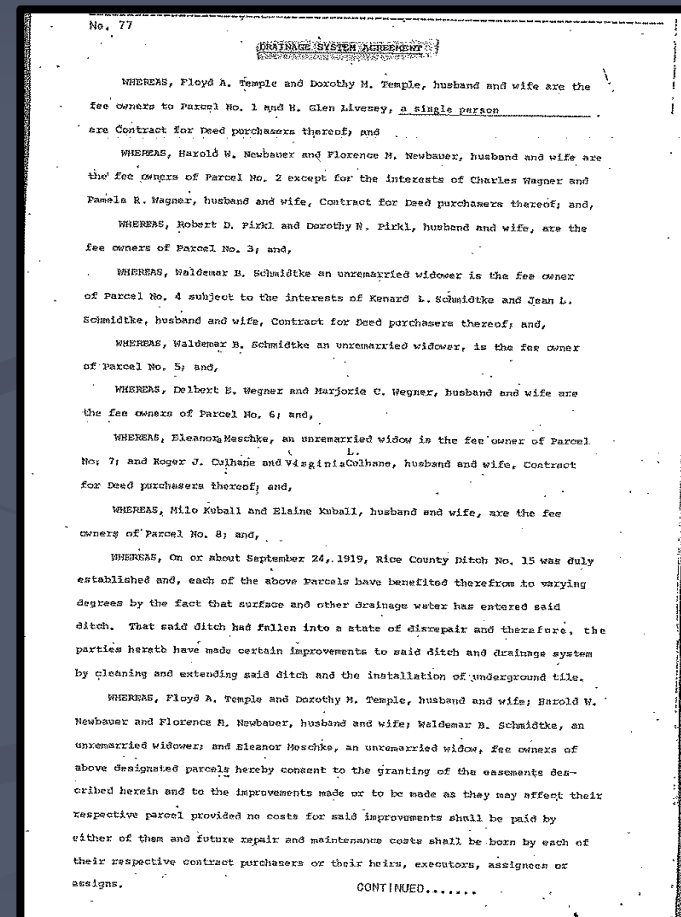


## ❑ Private Drainage Systems

### ■ Written Drainage Agreements

- ❖ Recorded against property

- ❖ Involves Multiple  
Landowners/Properties



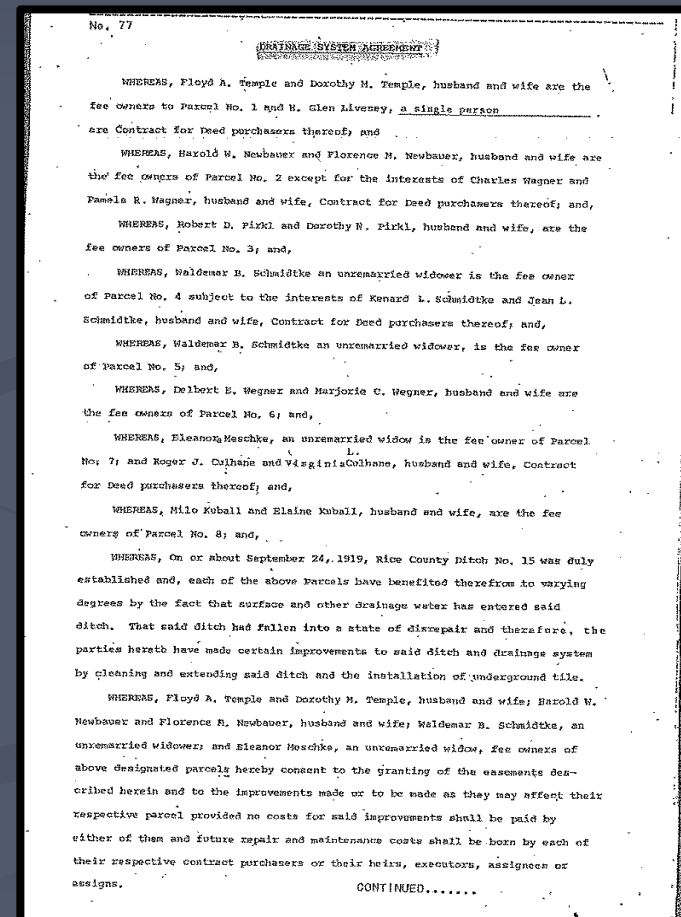


## ❑ Private Drainage Systems

### ■ Written Drainage Agreements

❖ Highly Variable – Must Read

❖ Often will Need to be Amended as part of Restoration (but not always)





Schedule A attached hereto and made a part hereof, and

WHEREAS, the said parties have agreed among themselves as to the construction of a tile line for drainage purposes running through their respective premises according to plans and specifications prepared by the [REDACTED] County Soil Conservation Service which plans and specifications are made a part hereof by reference.

NOW THEREFORE, in consideration of the mutual benefits and advantages to the parties hereto, and their lands, all of the parties hereto do hereby agree as follows:

1. Said parties do hereby grant to each other, their heirs and assigns forever, the right and necessary easements to construct, maintain and repair the tile line and water way herein referred to and they agree they will do nothing to obstruct flow of water in said tile line and water way.

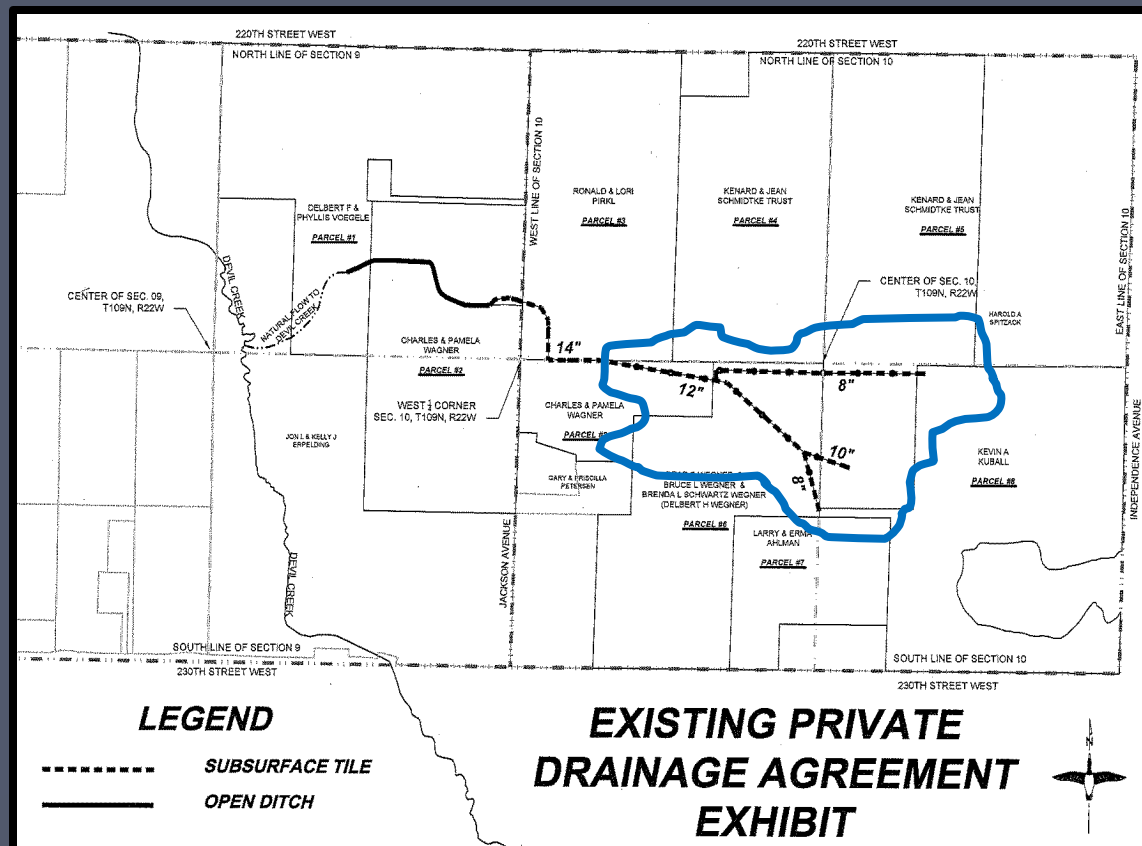
GRANTOR HEREIN AFFIRMS THAT THERE IS  
\$ 28 MINN. DEED TRANSFER TAX  
DUE ON THIS INSTRUMENT.

BOOK 40 PAGE 217

## ❑ Private Drainage Systems

### ■ Written Drainage Agreements

#### ❖ May Include Map





## ❑ Private Drainage Systems

### ■ Reasonable Use Doctrine

- ❖ Essentially Covers Everything Else
- ❖ Avoid “Unreasonable” Harm or Damage to Neighboring Properties

Each case is unique



## ❑ Private Drainage Systems

### ■ Reasonable Use Doctrine

- ❖ Respect Private  
Drainage Systems –  
Landowner's Drainage  
Rights



## ❑ Private Drainage Systems

- Who Oversees and Protects Landowner Private Drainage Rights?
  - Courts
  - Local Permitting Agencies





# Drainage Systems Manipulation *Legal Issues*


## ❑ Private Drainage Systems

### ■ Local Permits

#### ❖ Watershed Districts

#### ❖ Watershed Management Organizations

#### ❖ Zoning



## PERMIT APPLICATION

**Return application to:**  
**Sauk River Watershed District**  
 524 Fourth Street South  
 Sauk Centre, MN 56378  
 Phone: (320) 352-2231  
 Fax: (320) 352-6455

**TO BE COMPLETED BY DISTRICT:**

PAN \_\_\_\_\_

AMT RECEIVED \_\_\_\_\_ DATE \_\_\_\_\_

RECEIVED FROM \_\_\_\_\_

**Project Name** \_\_\_\_\_ **Address/Intersection** \_\_\_\_\_ **City** \_\_\_\_\_

**Project Location:** \_\_\_\_\_  $\frac{1}{2}$  \_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_ **Section** \_\_\_\_\_ **Township** \_\_\_\_\_ **County** \_\_\_\_\_

**Project Purpose** *(Please be specific and include amount of grading and excavation; total length and diameter of tile installed; amount of impervious surface; etc. Attach additional sheets if necessary.)*

Area of Land Disturbance (square feet) \_\_\_\_\_

Distance to Lake, Stream, or River (feet) \_\_\_\_\_

**Rule Applicability (check all that apply):**

☐ Rule 7 – Stormwater  
 ☐ Rule 8 – Erosion Control  
 ☐ Rule 9 – Drainage  
 ☐ Rule 10 – Water Uses

**Name of Owner** \_\_\_\_\_ **Organization Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**City, State, Zip** \_\_\_\_\_

**Phone** \_\_\_\_\_ **Fax** \_\_\_\_\_

**Email** \_\_\_\_\_

**Owner's Agent** \_\_\_\_\_ **Organization Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**City, State, Zip** \_\_\_\_\_

**Phone** \_\_\_\_\_ **Fax** \_\_\_\_\_

**Email** \_\_\_\_\_

The undersigned hereby acknowledges by signing this Permit Application, the undersigned, its agents, assigns and/or representatives (hereinafter "Permittee") shall abide by all the standard conditions and special terms and conditions of the Sauk River Watershed District (SRWD) Permit. Any work which violates the terms of the permit may result in the SRWD issuing a Stop Work Order, which shall immediately cause the work on the project relating to the permit to cease and desist. All work on the project shall cease until the permit conditions are met and approved by the SRWD.

I hereby make application for a permit or make notification to proceed with the proposed described above and have attached all supporting maps, plans, and other information submitted with this application and all necessary fees. The information submitted and statements made concerning this application are true and correct to the best of my knowledge.

Signature of owner or authorized agent \_\_\_\_\_

Date \_\_\_\_\_

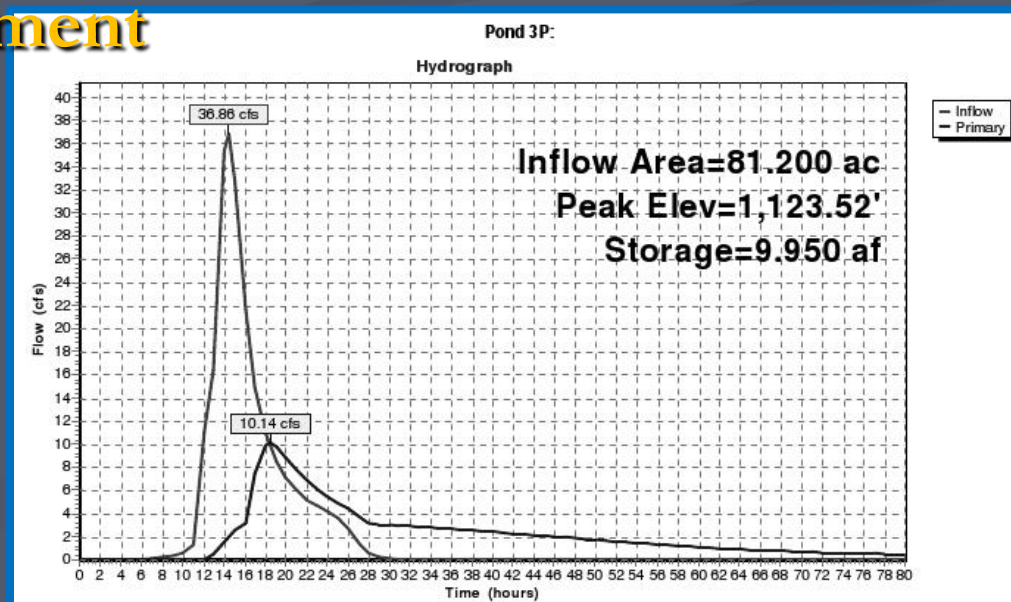
*Note: You may also need to apply for permits from other local, state, or federal agencies. If required by the District, the Applicant shall provide the approved permits from these agencies.*

T:\0019 Sauk River W0149 Rules\Appendix A\Permit Application Form.doc

## ❑ Private Drainage Systems

### ■ Local Permits

- ❖ Watershed Districts
- ❖ Watershed Management Organizations
- ❖ Zoning



## ❑ Easement Acquisition Considerations – *Future Maintenance of Shared Drainage Systems*

- Adjacent/Property Line Ditches
- Internal Drainage Systems



## ❑ Easement Acquisition Considerations – *Future Maintenance of Shared Drainage Systems*

- **Adjacent/Property Line Ditches**
- **Internal Drainage Systems**

## Restoration of Wetlands Adjacent to a Public Ditch

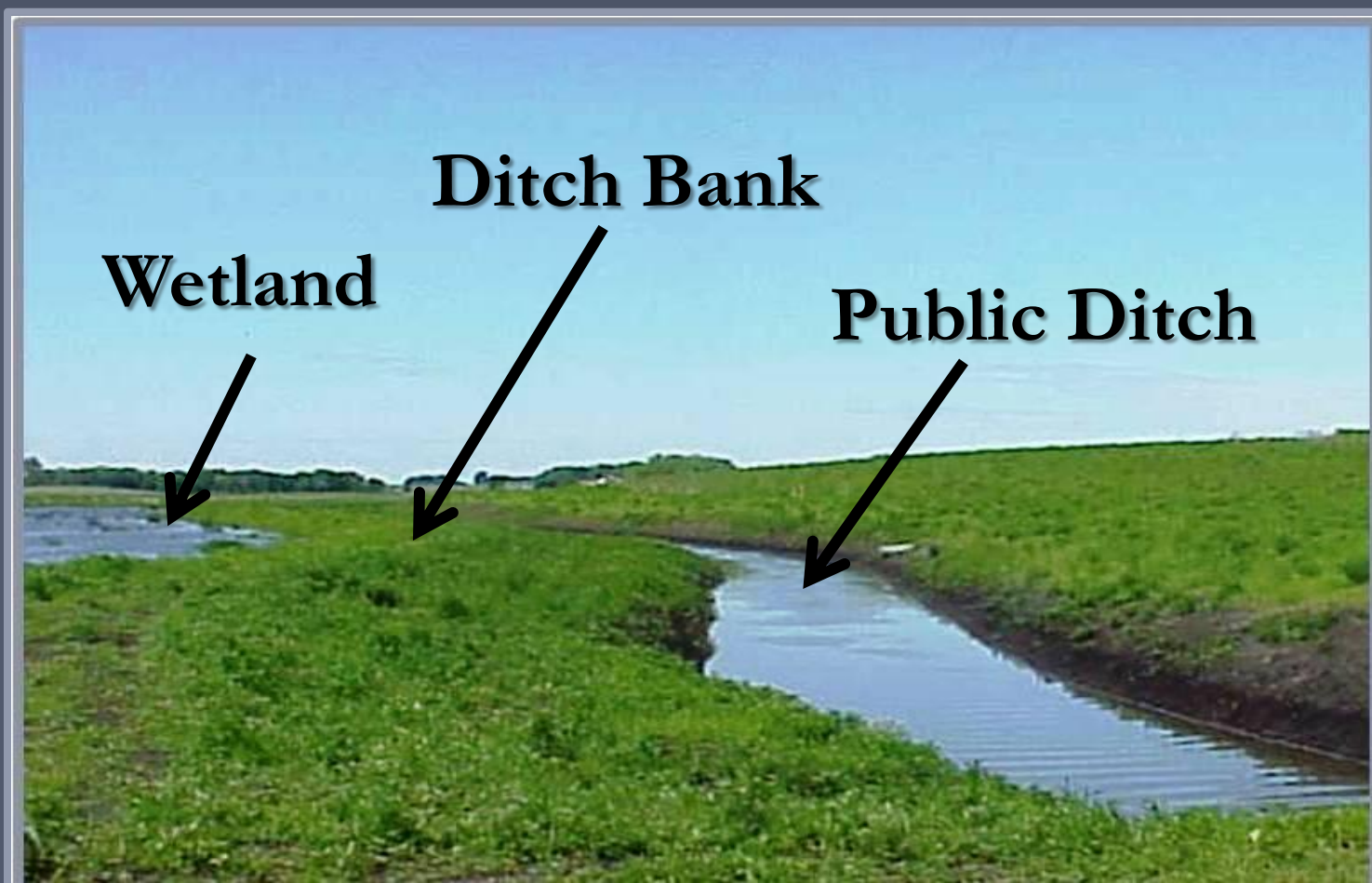
**Install Outlet Structure  
within Ditch Bank?**

**Remove Spoil?**

**Construct Dike?**

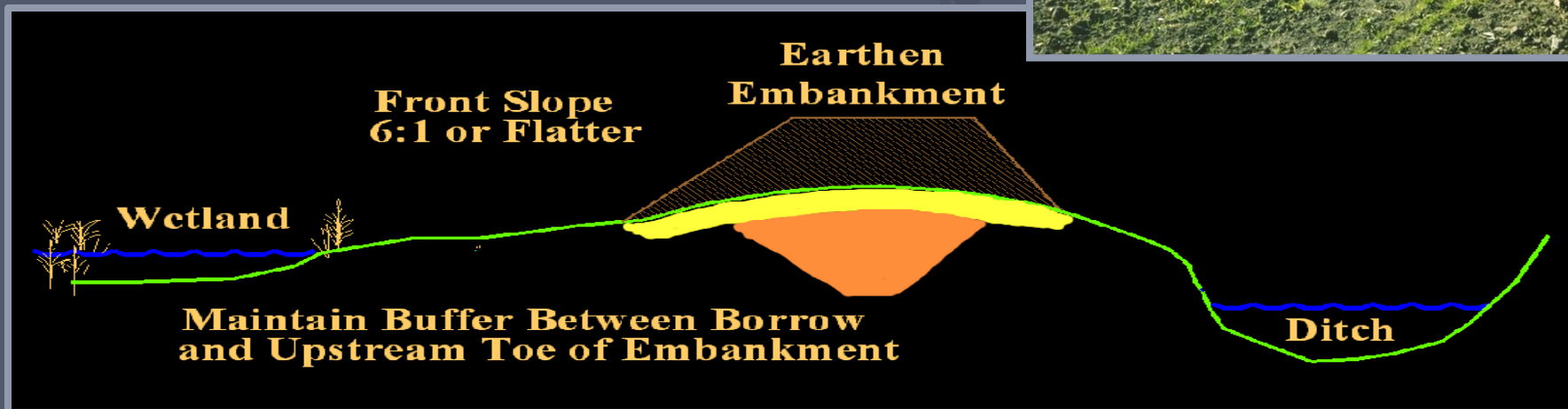


## Restoration of Wetlands Adjacent to a Public Ditch





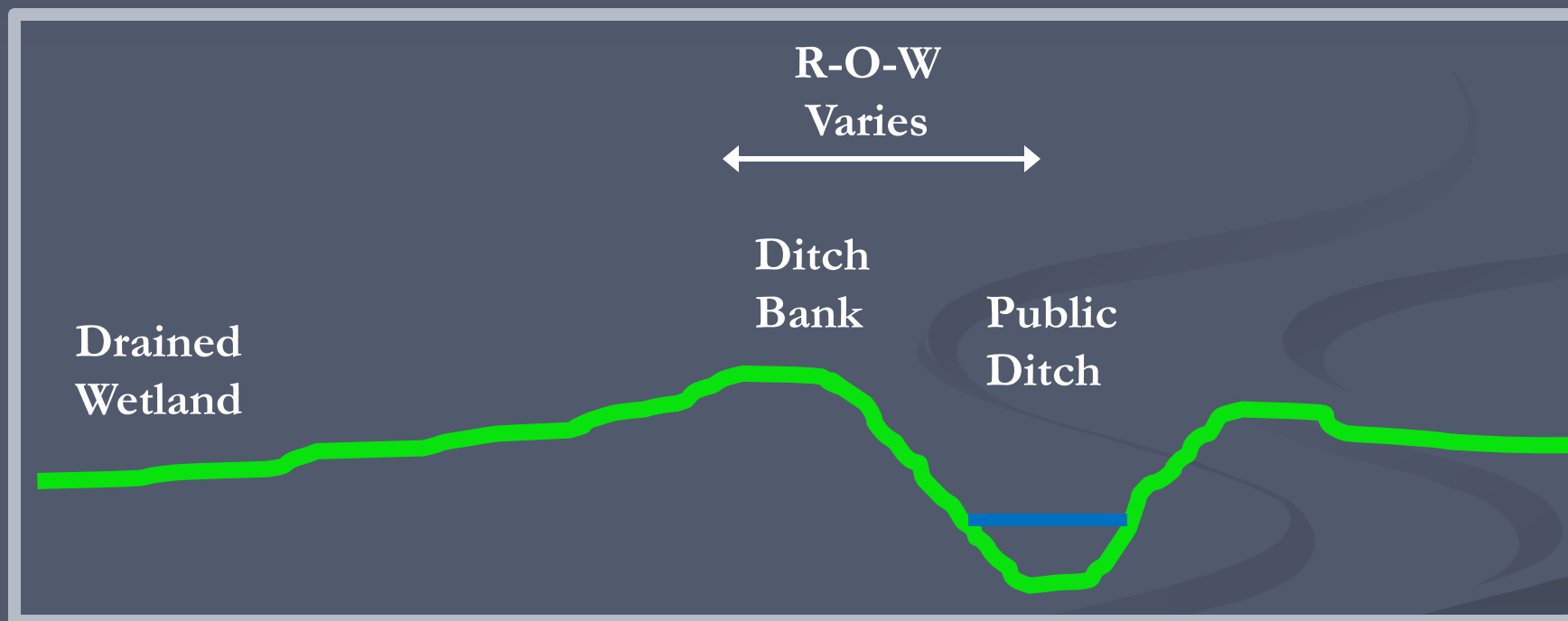
# Restoration of Wetlands Adjacent to a Public Ditch



## Restoration of Wetlands Adjacent to a Public Ditch

- Ditch bank is under authorization of Drainage Authority
- A right-of-way for the ditch does exist (may or may not be in the form of an easement)
- Right-of-width can/does vary

## Restoration of Wetlands Adjacent to a Public Ditch





# Restoration of Wetlands Adjacent to a Public Ditch

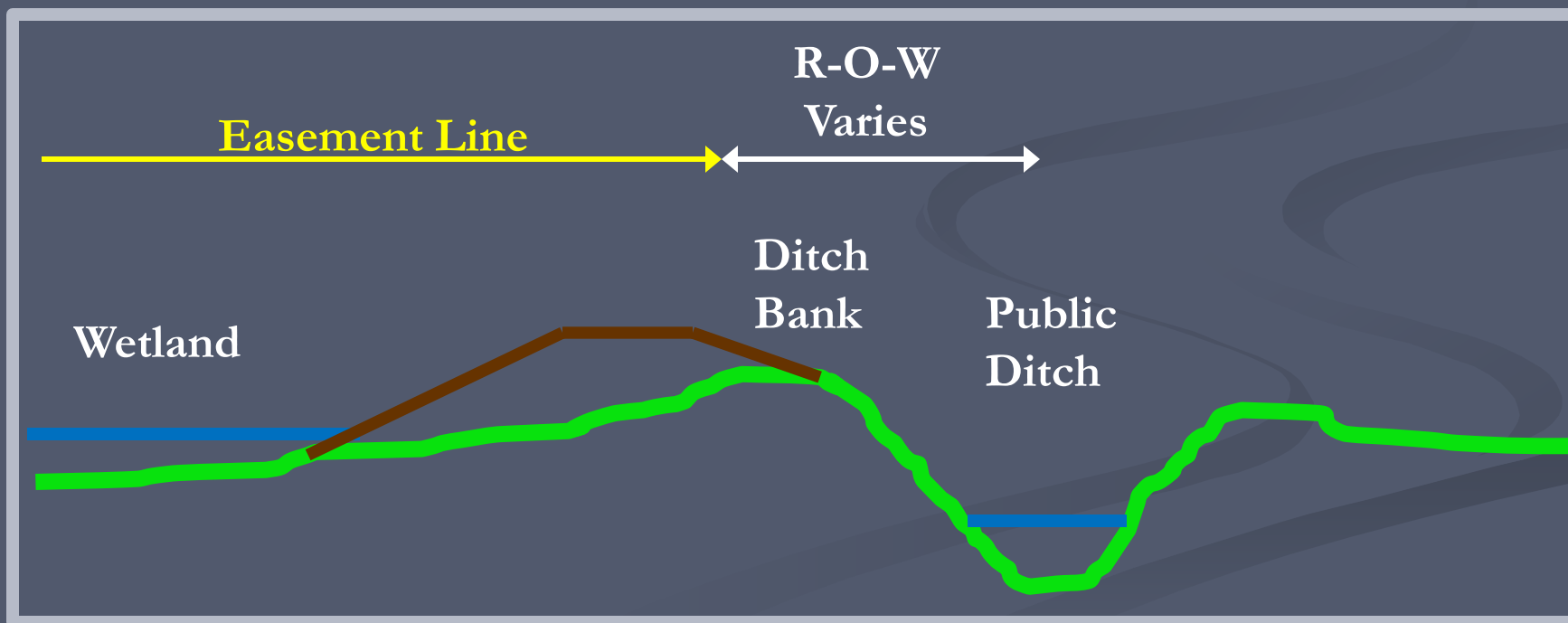
Why is it  
important to  
know this?



Lawful ditch  
maintenance and  
construction access!!

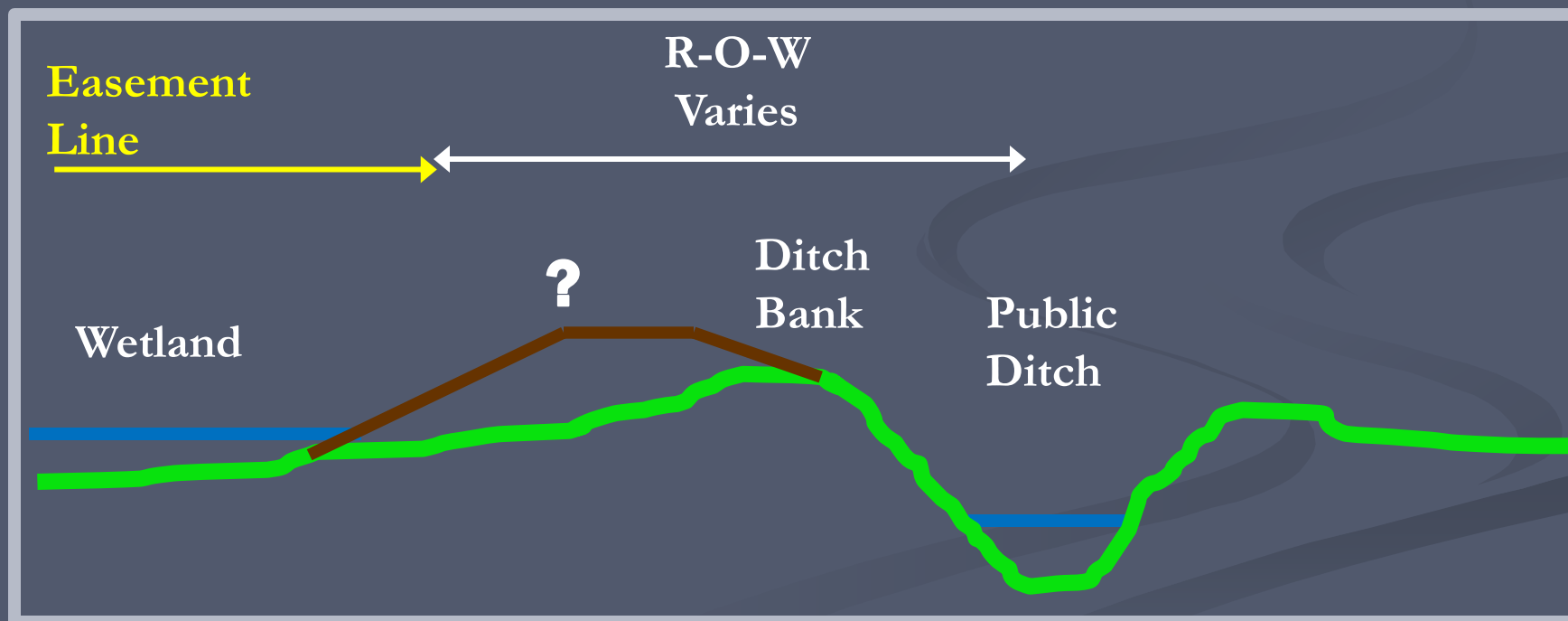
# Restoration of Wetlands Adjacent to a Public Ditch

## Construction/Easement Acquisition



# Restoration of Wetlands Adjacent to a Public Ditch

## What If ?

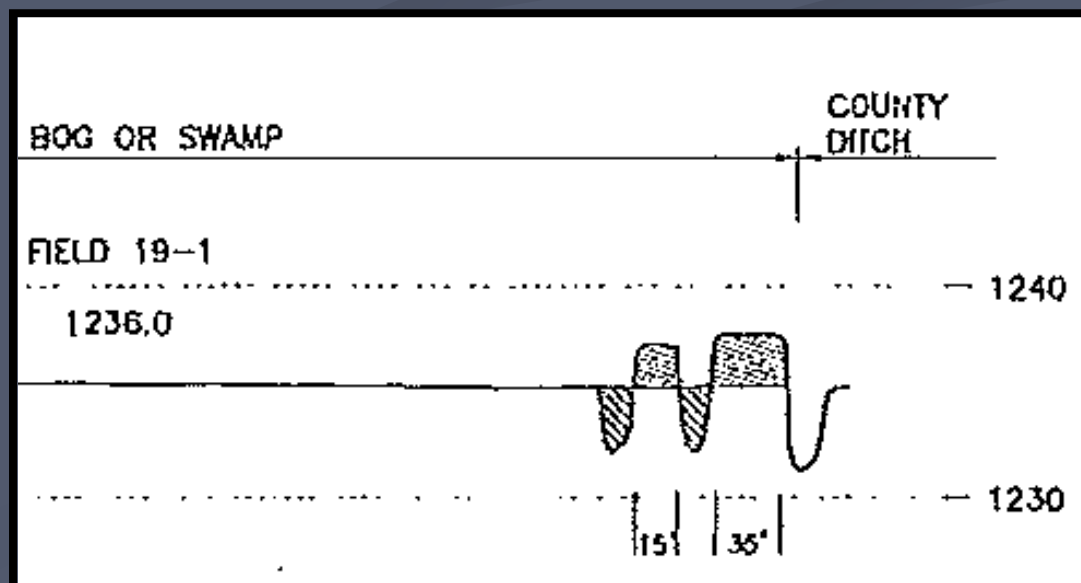




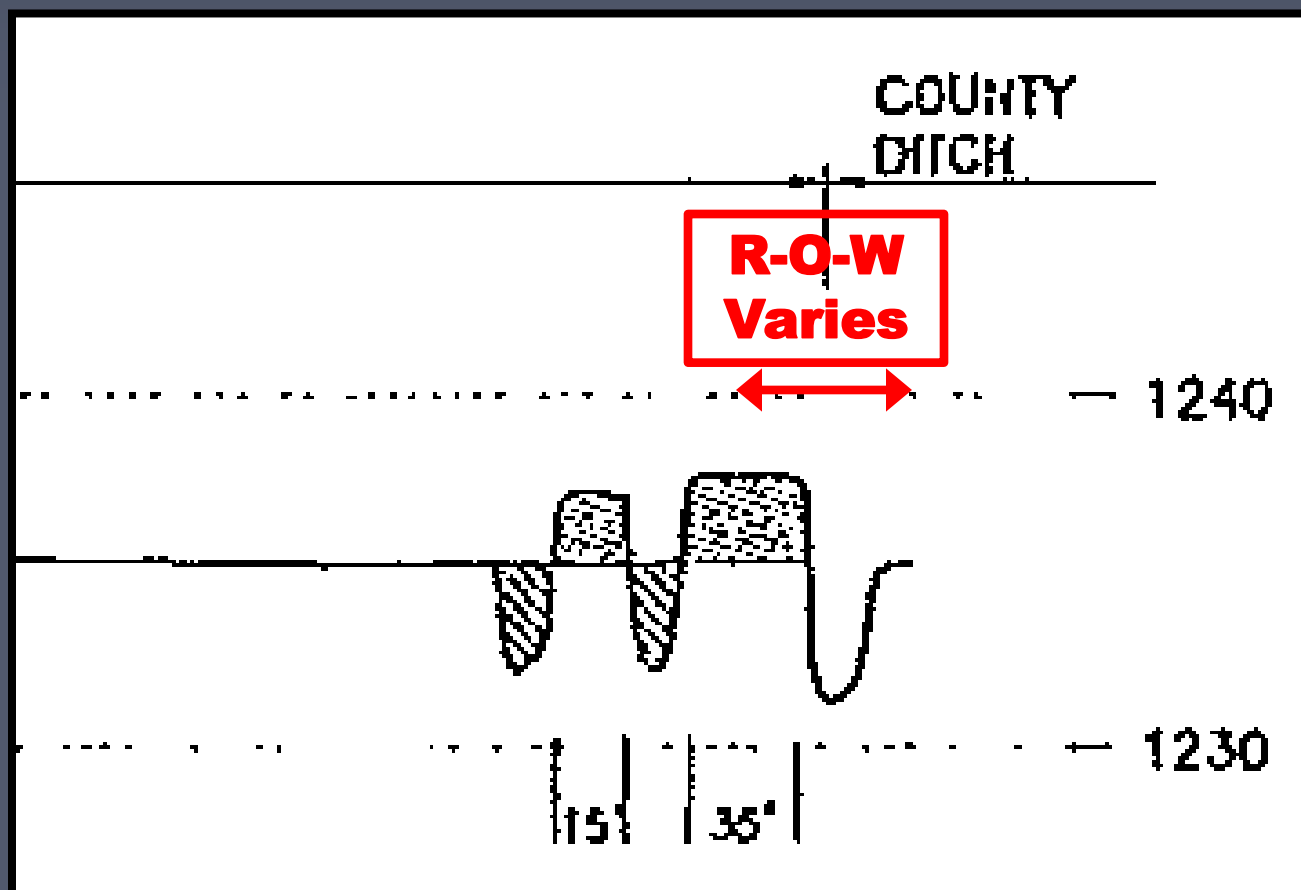
# Restoration of Wetlands Adjacent to a Public Ditch



Unmaintained  
County Ditch?



## Restoration of Wetlands Adjacent to a Public Ditch



## Restoration of Wetlands Adjacent to a Public Ditch

- Need to determine actual right-of-way width (easement/construction)
- Petition not needed but one should seek and gain permission for any planned construction work within a ditch right-of-way
- Communicate with Drainage Authority!
- There are some potential long-term risks



## Restoration of Wetlands Adjacent to a Private Ditch

- Issues are similar for a private ditch except:
  - There is no defined right-of-way
  - Communicate/Coordinate with Affected Landowners



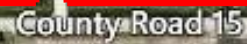
## ❑ Easement Acquisition Considerations – *Future Maintenance of Shared Drainage Systems*

- Adjacent/Property Line Ditches
- **Internal Drainage Systems**

## Internal Drainage Systems (Contained Within) Easements







# When to Address the Legal Stuff?



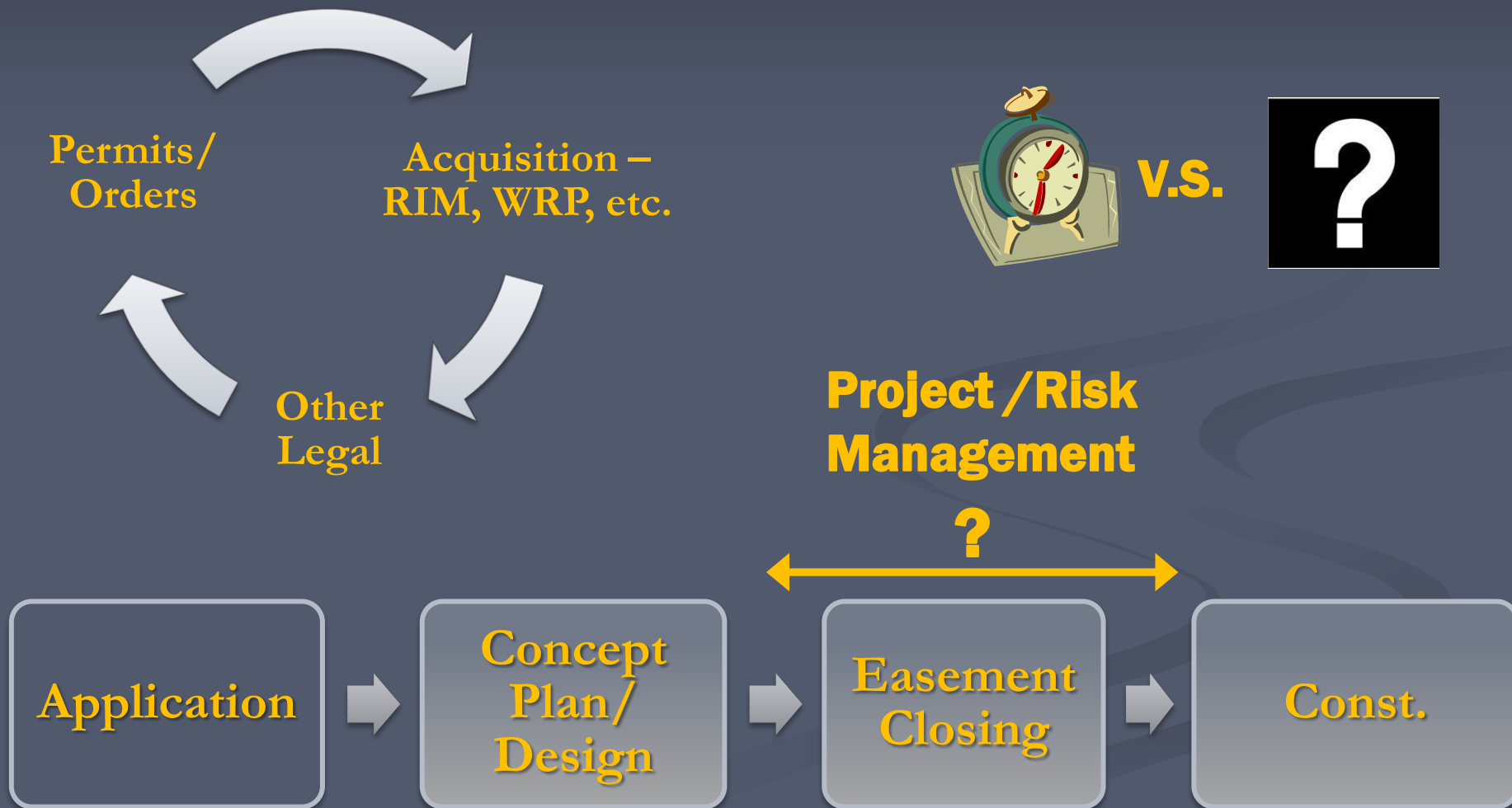
**Need to First Know  
What You Are  
Dealing With**



- Public vs. Private Drainage
- Program/Project Purpose
- Project Scope/Complexity
- Known Issues or Concerns



# When to Address the Legal Stuff RIM, WRP, etc.?



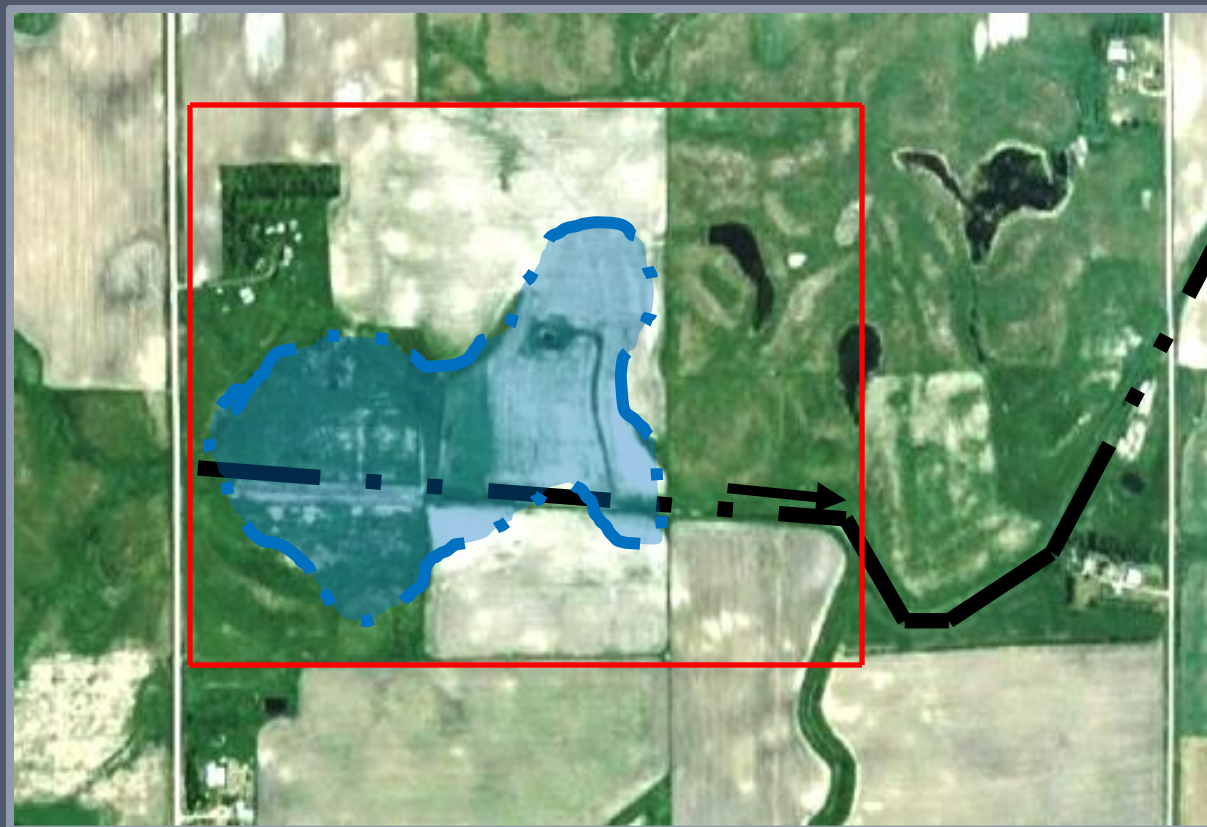
# When to Address the Legal Stuff

## WCA – Banking, etc.?



# When to Address the Legal Stuff?

## Example

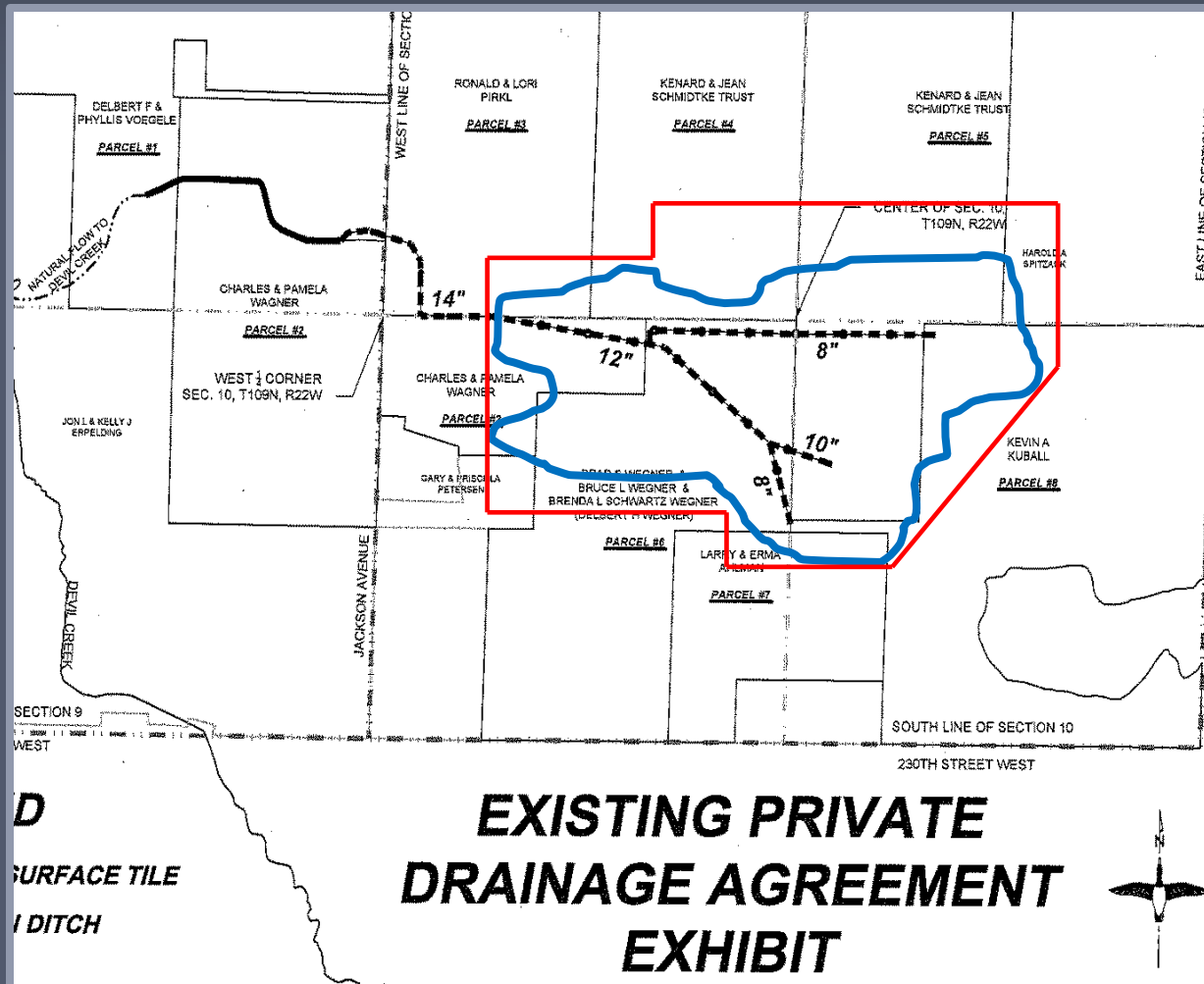


- RIM, etc. ?
- WCA ?



# When to Address the Legal Stuff?

## Example



- RIM, etc. ?
- WCA ?

## *In Closing ...*

“Whiskey is for drinking;  
water is for fighting over.”

*Mark Twain*





# Questions?

